

Order Dismissing Claims against Defendant Nurse Smith
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1 additional information about the identify of defendant Nurse Smith.¹ On July 26, 2013, the court
2 issued a third order of service on defendant Nurse Smith including the additional information
3 provided by plaintiff. (Docket No. 70.) On August 19, 2013, the Litigation Office Technician at
4 PBSP returned the documents to the court a third time with a letter indicating that he was
5 “unable to identify a ‘Nurse J. Smith’ as ever working at Pelican Bay State Prison.” (Docket No.
6 75.) Defendant Nurse Smith has not been served.

7 Although a plaintiff who is incarcerated and proceeding *in forma pauperis* may rely on
8 service by the Marshal, such plaintiff “may not remain silent and do nothing to effectuate such
9 service”; rather, “[a]t a minimum, a plaintiff should request service upon the appropriate
10 defendant and attempt to remedy any apparent defects of which [he] has knowledge.” *Rochon v.*
11 *Dawson*, 828 F.2d 1107, 1110 (5th Cir. 1987).

12 Here, plaintiff’s complaint has been pending for over 120 days, and he has failed to show
13 “good cause,” as to why his claims against this defendant should not be dismissed. *See* Fed. R.
14 Civ. P. 4(m). This court has attempted to serve defendant Nurse Smith on three occasions
15 utilizing the information provided by plaintiff. All three attempts have failed. Plaintiff was
16 advised that failure to provide the court with an accurate and current address for defendant Nurse
17 Smith would result in the claims against defendant Nurse Smith being dismissed pursuant to
18 Rule 4(m) of the Federal Rules of Civil Procedure. Plaintiff has not provided sufficient
19 information to allow the Marshal to locate and serve defendant Nurse Smith. Consequently,
20 plaintiff’s claims against defendant Nurse Smith are **DISMISSED** without prejudice.

21 This order terminates docket number 67.

22 IT IS SO ORDERED.

23 DATED: 10/21/13

24 
LUCY H. KOH
United States District Judge

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26
27 ¹ Plaintiff requests this court to order defendant Lewis to provide the home address of
28 defendant Nurse Smith. (Docket No. 67.) The Litigation Office Technician has already stated
that PBSP cannot identify a Nurse Smith as having ever worked at PBSP. Plaintiff’s motion is
DENIED.